

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 12599 of 2002

Between:

1. A.Ramaswami Reddy, S/o.late A.Raghunadha Reddy,
Aged about 38 years, Occ: Assistant Manager (Engg.)
A.P. State Housing Corporation Ltd., Chittoor, R/o.Chittoor
2. K.Ramesh Reddy, S/o.late K. Ramachandra Reddy,
Aged about 35 years, Occ: Technical Assistant,
NIRMITHI KENDRA, Chittoor District, R/o. Chittoor
3. R. Janaki Rami Reddy, S/o.R. Ramachandra Reddy,
Aged about 43 years, Occ: Technical Assistant,
NIRMITHI KENDRA, Srialahasthi, Chittoor District
R/o.Srialahasthi

..... PETITIONER

AND

1. State of Andhra Pradesh rep. By its Secretary to Government,
Housing Department, Secretariat buildings, Saifabad, Hyderabad.
2. Andhra Pradesh State Housing Corporation Ltd.,
Urdugalli, Himayatnagar, Hyderabad-29 rep. By its Managing Director
3. The District Collector/Chairman, NIRMITHI KENDRA, Chittoor District/
Executive Director, A.P. State Housing Corporation Ltd., Chittoor Dist.
4. The District Manager, A.P. State Housing Corporation Ltd.,

Chittoor/Secretary, NIRMITHI KENDRA, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of Mandamus (a) declaring the action of the respondents in not regularizing the services of the petitioners as Assistant Executive Engineers and not extending the regular pay scale of Asst. Executive Engineer as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and (b) declaring that the petitioners are fully qualified to be regularized as Asst. Executive Engineers and direct the respondents to regularize the services of the petitioners as Asst. Executive Engineers and consequently direct the respondents to extend the regular pay scales of Asst. Executive Engineer to the petitioners with all consequential benefits.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents: MR.K.MOHAN RAMI REDDY

The Court made the following:

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in not regularizing the petitioners' services as Assistant Executive Engineers and not extending the regular pay scales of Asst. Executive Engineers as illegal and arbitrary.

The brief facts that are necessary for the purpose of disposal of the writ petition may be delineated as follows:

The petitioners were initially appointed as Technical Assistants at various Nirmithi Kendras, in Chittoor District on a consolidated pay of Rs.900/- p.m. The petitioners were asked to discharge their duties as Asst. Executive Engineers at each Nirmithi Kendra and they worked as such. Therefore, the respondents ought to have extended regular pay scales as applicable to the Asst. Executive Engineers who are working in the Housing Corporation. For all practical purposes, the petitioners are discharging the duties of Asst. Executive Engineers on par with Asst. Executive Engineers of Housing Corporation. The Technical Assistants, who have qualifications of Graduation are being treated as Asst. Executive Engineers by the respondents.

According to them, the petitioners take instructions and orders from the Deputy Executive Engineers for execution of works which would amply prove that they are discharging the duties of the Asst. Executive Engineers and the respondents are extracting the work of Asst. Executive Engineers, but the petitioners are being paid salaries of Work Inspectors. There are four Nirmithi Kendras in the entire Chittoor District, and therefore, this writ petition has been filed.

The respondents filed a detailed counter affidavit admitting that the petitioners were appointed as Technical Assistants by the District Manager at Nirmithi Kendras in Chittoor District. While appointing them as Technical Assistants, it was made clear that they should attend the work of production of building materials and other related works of Nirmithi Kendra and to maintain relevant records. Mere attendance to the work will not make them entitle to become Asst. Executive Engineers as they were appointed as Technical Assistants which is equivalent to Technical Work Inspector (NMR), and therefore, they are equally Work Inspectors. On administrative exigencies, the 1st petitioner was posted to work as Asst. Manager (Engineer) and he was neither promoted nor absorbed, but he was only asked to discharge his duties in the post of Asst. Manager (Engineer). It is further stated that there is no separate post of Asst. Engineer for Nirmithi Kendra and no permanent posts are sanctioned to Nirmithi Kendra. As the petitioners were originally appointed as Technical Assistants in Nirmithi Kendra which is a separate independent society, the temporary employees working under the sanctioned posts are not eligible for regularization. Hence, the respondents pray to dismiss the writ petition.

Heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioners has contended that though the petitioners were initially appointed as Technical Assistants, they have been asked to discharge the duties of Asst.

Executive Engineers for the last 12 or 14 years under the sanctioned posts available. Therefore, he prays to regularize the services of the petitioners. In the alternative, he has submitted that the case of the petitioners may be considered in accordance with the rules and regulations.

The learned standing counsel for A.P. State Housing Corporation has contended that there are no sanctioned posts for regularizing the services of the petitioners.

It is not in dispute that the petitioners were originally appointed as Technical Assistants in Nirmithi Kendra, Chittoor District. It is also not in dispute that at present, they are directed to work as Asst. Managers (Engineers). As seen from the counter affidavit, it is specifically stated that there are no sanctioned posts of Asst. Executive Engineers in Nirmithi Kendra, and as per the instructions of the Government, if Asst. Executive Engineers are required by Nirmithi Kendra, they must be sent on deputation from A.P. State Housing Corporation Ltd. The competent authority is utilizing the services of the petitioners as Asst. Executive Engineers. Since however long they may be working, they are not liable to be regularized simply because they are discharging their duties as Asst. Executive Engineers. For promotion to the posts of Asst. Executive Engineers in Nirmithi Kendras, there must be sanctioned posts or vacancies available. If the petitioners are from feeder category i.e. the Technical Assistants are from the feeder category for the posts of Asst. Executive Engineers, they are required to be gone into and decided by the 3rd and 4th respondents in accordance with rules and regulations governing the service conditions of the petitioners. Since the petitioners were not promoted to Asst. Executive Engineers or Asst. Manager (Engineers), their services cannot be regularized, so also, their pay scales cannot be extended, however, the matter is required to be decided by the 3rd and 4th respondents whether they are qualified for appointment as Asst. Executive Engineers or Asst. Managers (Engineer) subject to availability of vacancies and also sanctioned posts in Nirmithi Kendras.

For the foregoing reasons, this writ petition is disposed of with a direction to the 3rd and 4th respondents to consider the case of the petitioners in accordance with the rules and regulations. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

10th June, 2005

bcj

To

1. The Secretary to Government, State of Andhra Pradesh,
Housing Department, Secretariat Buildings, Saifabad, Hyderabad.
2. The Managing Director, Andhra Pradesh State Housing Corporation Ltd.,
Urdugalli, Himayatnagar, Hyderabad-29.
3. The District Collector/Chairman, NIRMITHI KENDRA, Chittoor District/
Executive Director, A.P. State Housing Corporation Ltd., Chittoor Dist.
4. The District Manager, A.P. State Housing Corporation Ltd.,
Chittoor/Secretary, NIRMITHI KENDRA, Chittoor District.

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